Chai Kok Choy v Ketua Polis Negara & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S2-21-112 OF 1995
KAMALANATHAN RATNAM J
20 SEPTEMBER 2002

Administrative Law *— Natural justice — Breach — Failure of disciplinary authority to consider whether breaches of discipline complained of merited dismissal or reduction in rank — Disciplinary authority focused only on dismissal — Whether disciplinary authority acted ultra vires its powers — Public Officers (Conduct and Discipline) Regulations 1993 general orders 28 and 38*

The plaintiff was a Police Inspector in the Royal Malaysian Police Force under the control of the first defendant and employed by the third defendant. By a letter dated 3 May 1995, the first defendant informed the plaintiff of his intention to dismiss the plaintiff and directed the plaintiff to show cause as to why he should not be dismissed pursuant to general order 28 of the Public Officers (Conduct and Discipline) Regulations 1993 and punishable by general order 38 of the same Regulations. The plaintiff faced three charges and responded by making his representations to the show cause notice within the stipulated time. The plaintiff was found guilty of all the charges and was dismissed from service. The plaintiff filed a writ and sought, inter alia, a declaration that the dismissal was unlawful, unconstitutional, void and of no effect and that an enquiry be held to determine the salaries, emoluments and benefits due to him.

Held, granting an order in terms of the plaintiff's prayers:

The defendants had clearly breached all semblance of natural justice. It was clear from the Regulations that the disciplinary authority had to consider whether each of the breaches complained of merited a punishment of dismissal or reduction in rank and consider all the available information. After such consideration if it appeared to the disciplinary authority that such information clearly presented a prima facie case against the plaintiff, then the plaintiff could either be dismissed or reduced in rank. Here, the disciplinary authority's focus was only on dismissal and it had acted ultra vires its powers as contained in general order 28(1) (see pp 368H, 369E–G).

[Bahasa Malaysia summary

Plaintif merupakan seorang Inspektor Polis dengan Polis DiRaja Malaysia di bawah pengawasan defendan pertama dan diambil bekerja oleh defendan ketiga. Melalui surat yang bertarikh 3 Mei 1995, defendan pertama telah memberitahu plaintif niatnya untuk memecat plaintif dan telah mengarahkan plaintif supaya menunjuk

sebab kenapa plaintif tidak patut dipecat menurut perintah am 28 Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993 dan boleh dihukum di bawah perintah am 38 Peraturan-Peraturan tersebut. Plaintif menghadapi tiga pertuduhan dan telah membuat representasi-representasi beliau kepada notis tunjuk sebab di dalam tempoh masa yang diperuntukkan. Plaintif telah didapati bersalah di atas semua pertuduhan tersebut dan telah dipecat. Plaintif telah memfailkan writ dan memohon, antara lain, deklarasi bahawa pemecatan tersebut menyalahi undang-undang, menyalahi Perlembagaan, tak sah dan tidak berkesan dan untuk satu siasatan diadakan untuk menetapkan gaji, emolumen-emolumen dan faedah-faedah beliau.

Diputuskan, memberi suatu perintah seperti yang dipohon:

Defendan-defendan telah melanggar keadilan asasi dengan jelasnya. Adalah jelas daripada Peraturan-Peraturan bahawa pihak berkuasa tatatertib perlu menimbangkan sama ada setiap perlanggaran yang dikatakan memeritkan hukuman pemecatan atau penurunan pangkat dan perlu menimbang segala maklumat yang terdapat. Setelah membuat pertimbangan itu, jikalau pihak berkuasa tatatertib berpendapat bahawa maklumat tersebut menunjukkan kes prima facie terhadap plaintif, plaintif boleh dipecat ataupun diturun pangkat. Di sini, fokus pihak berkuasa tatatertib adalah hanya pada pemecatan dan ia telah bertindak ultra vires kuasanya di dalam perintah am 28(1) (lihat ms 368H, 369E–G).

Notes

For cases on breaches of natural justice, see 1 *Mallal's Digest* (4th Ed, 1998 Reissue) para 133.

Cases referred to

Inspector-General of Police & Anor v Alan Noor bin Kamat [1988] 1 MLJ 260 (folld)

Legislation referred to

General Orders, Chapter D, 30 para (2)

Public Officers (Conduct and Discipline) Regulations 1993 general orders 28, (1), 38

Haresh Mahadevan (*Aris Rizal Christopher Fernando & Co*) for the plaintiff.

Amarjeet Singh (Senior Federal Counsel, Attorney General's Chambers) for the defendant.

Kamalanathan Ratnam J:

Facts

The plaintiff was a Police Inspector in the Royal Malaysian Police Force under the control of the first defendant and in the employment of the third defendant. By a letter dated 3 May 1995, the first defendant informed the plaintiff of his intention to dismiss the plaintiff from the police force and directed the plaintiff to show cause why he should not be dismissed pursuant to general order 28 of the Public Officers (Conduct and Discipline) Regulations 1993 and punishable under general order 38 of the same Regulations. The plaintiff faced three charges. They read as follows:

> Alasan Pertama
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> Bahawa anda, CHAI KOK CHOY (I/10235) seorang pegawai awam iaitu Inspektor dalam Pasukan Polis DiRaja Malaysia semasa bertugas sebagai Inspektor Kawasan, Batu 9 Kajang telah didapati memasuki lokap Polis Kajang pada 30 Disember 1994 jam 0125 dan pada 5 Januari 1995 jam 2235 untuk berurusan dengan seorang penjenayah yang ditahan di bawah s 3(1) Ordinan Darurat (Ketenteraman Awam dan Mencegah Jenayah) 1969 iaitu HIEW YOON KEYONG (KP: 7100942) TANPA KEBENARAN Ketua Polis Daerah Hulu Langat, Kajang atau pegawai penyiasat yang bertanggungjawab atas penahanan tersebut. Perbuatan anda itu boleh diertikan sebagai tidak jujur iaitu melanggar tatakelakuan di bawah Peraturan 4(2)(f) Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993 yang berbunyi seperti berikut:
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> 4(2) seseorang pegawai tidak boleh — (f) tidak jujur atau tidak amanah.
>
> Jika anda didapati bersalah ke atas alasan pertama, anda boleh dihukum mengikut Peraturan 38 Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993.
>
> Alasan Kedua
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> Bahawa anda, CHAI KOK CHOY (I/10235) seorang pegawai awam iaitu Inspektor dalam Pasukan Polis DiRaja Malaysia semasa bertugas sebagai Inspektor Kawasan, Batu 9 Kajang telah membantu penjenayah HIEW YOON KEYONG (KP: 7100942) yang ditahan di bawah s 3(1) Ordinan Darurat (Kementerian Awam dan Mencegah Jenayah) 1969 ditandatangani oleh penama HIEW YOON KEYONG (KP: 7100942) pada 5 Januari 1995 jam 2235 bagi membolehkannya terus berurusan dalam perniagaan semasa dalam tahanan. Perbuatan anda itu boleh diertikan sebagai berkelakuan tidak bertanggungjawab, iaitu melanggar tatakelakuan di bawah Peraturan 4(2)(g) Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993 yang berbunyi seperti berikut:
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> 4(2) seseorang pegawai tidak boleh — (g) tidak bertanggungjawab.
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> Jika anda didapati bersalah ke atas alasan kedua, anda boleh dihukum mengikut Peraturan 38 Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993.

Alasan Ketiga

Bahawa anda, CHAI KOK CHOY (I/10235) seorang pegawai awam iaitu Inspektor dalam Pasukan Polis DiRaja Malaysia semasa bertugas sebagai Inspektor Kawasan, Batu 9 Kajang telah didapati mempunyai perhubungan yang rapat atau berkawan rapat dengan seorang penjenayah iaitu HIEW YOON KEYONG (KP: 7100942) di antara tahun 1993 dan 1994. Perbuatan anda itu boleh diertikan sebagai berkelakuan dengan sedemikian cara hingga memburukkan nama atau mencemarkan nama baik pasukan, iaitu melanggar tatakelakuan di bawah Peraturan 4(2)(d) Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993 yang berbunyi seperti berikut:

4(2) seorang Pegawai tidak boleh — (d) berkelakuan dengan sedemikian cara hingga memburukkan nama atau mencemarkan nama perkhidmatan awam.

Jika anda didapati bersalah ke atas alasan ketiga, anda boleh dihukum mengikut Peraturan 38 Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993.

The plaintiff responded by making his representation to the show cause notice and within the stipulated time. Within one month of his representation, the plaintiff was found guilty of all three charges and the sentence in respect of each of the three charges was dismissal from service. Dissatisfied with the said decision, the plaintiff filed this writ and sought the following orders:

(1) a declaration that the plaintiff's dismissal from the police force is unlawful, unconstitutional, void and of no effect and that the plaintiff is still an Inspector in the Royal Malaysian Police Force and entitled to all the salaries, emoluments and benefits due as such Inspector;

(2) an enquiry to be held to determine the salaries, emoluments and other benefits due to the plaintiff;

(3) damages;

(4) costs;

(5) any further or other relief deemed fit and proper by this honourable court.

Findings of the court

Whilst I had heard the case much earlier, parties by consent requested that I defer my decision pending a decision from the Federal Court. However, I am satisfied that there is no need for me to defer this judgment any further.

To my mind the defendants had clearly breached all semblance of natural justice. General order 28(1) and general order 38 are reproduced for ease of reference.

General order 28(1) reads as follows:

The appropriate Disciplinary Authority sitting to consider a case where the breach of discipline complained of has been found to be of a nature

A which merits a punishment of dismissal or reduction in rank shall consider all the available information and where it appears that there is a *prima facie* case against the officer for dismissal or reduction in rank, the appropriate Disciplinary Authority shall direct that a statement containing the facts of the breach of discipline alleged to have been committed by the officer and any proposed ground on which the officer is to be dismissed or reduced in B rank be sent to the officer and shall call upon him to make a written representation, containing grounds upon which he relies to exculpate himself, within a period of not less than twenty-one days from the date of receipt of the charge.

General order 38 reads as follows:

C The appropriate Disciplinary Authority may, if it finds an officer guilty of contravening any of the provisions of these Regulations, and after having regard to the seriousness of the offence, impose upon the officer any one or any combination of two or more of the following punishments:

(a) warning;

D (b) fine;

(c) forfeiture of employment;

(d) deferment of salary movement;

(e) reduction of salary;

(f) reduction in rank; or

E (g) dismissal.

It is clear from the Regulations that gives the disciplinary authority the power to sit in judgment over the plaintiff that it must consider whether each of the breaches complained of merited a punishment of dismissal or reduction in rank and that it is incumbent on the said disciplinary authority F to consider all the available information, and after such consideration, if it appears to the said disciplinary authority that such information clearly presented a prima facie case against the plaintiff, then the plaintiff could either be dismissed or reduced in rank. In this case, the disciplinary authority's focus was only on dismissal. In doing so, clearly the disciplinary authority had acted ultra vires its powers as contained in general order G 28(1).

The disciplinary authority had no power to prejudge on the charges and decide for itself that the charges merited only the punishment of dismissal. Having taken such a one-sided view, the disciplinary authority could not be said to be unbiased. Having made its decision that the plaintiff was entitled H only to an acquittal or to the draconian punishment of dismissal without considering the alternative punishment of reduction in rank, the disciplinary authority has clearly not complied with general order 38 whereby it could have had the choice of any one of seven punishments for consideration. In *Inspector-General of Police & Anor v Alan Noor bin Kamat* [1988] 1 MLJ 260, the Federal Court held that as the show cause letter did I not direct the respondent's attention to the possibility of the punishment of reduction in rank, it had not sufficiently complied with the requirement under para (2) of the old General Orders Chapter D 30.

In the circumstances, there is no necessity for me to consider all other issues raised by the plaintiff and responded to by the defendant.

I therefore grant an order in terms of prayers 1, 2, 3 and 4.

Order in terms of plaintiff's prayers granted.

Reported by Chew Phye Ken